

MISSOURI GAMING COMMISSION

COMMISSION RESOLUTION NO. 11-019
REGARDING ILSE OF CAPRI - CAPE GIRARDEAU, LLC
PETITION FOR APPROVAL OF PERMANENT DOCKING AND
HISTORIC DESIGN ELEMENTS OF EXCURSION GAMBLING BOAT

ISLE OF CAPRI-CAPE GIRARDEAU, LLC
March 30, 2011

WHEREAS, the IOC-Cape Girardeau, LLC ("IOC-CG") has filed an application for a Class B license with the Commission to own and operate a floating facility excursion gambling boat in Cape Girardeau, Missouri. The Commission selected IOC-CG as priority for investigation of suitability for licensure on December 1, 2010, Resolution No. 10-123; and

WHEREAS, pursuant to Sections 313.805 (16) and 313.812.3, RSMo, IOC-CG has submitted a petition requesting that the Missouri Gaming Commission grant approval of its site plan, continuous docking status, and the design of its proposed excursion gambling boat; and

WHEREAS, pursuant to 11 CSR 45-13.010 et seq., an administrative hearing was held on IOC-CG's petition, and the Hearing Officer has submitted the proposed Findings of Fact, Conclusions of Law and Final Orders, attached as Exhibit A, for approval by the Commission; and

NOW, THEREFORE, BE IT RESOLVED, that the Commission has reviewed the record of the hearing and the Findings of Fact, Conclusions of Law and Final Orders and hereby adopts the Findings of Fact, Conclusions of Law and Final Orders.

IN THE MISSOURI GAMING COMMISSION

In Re: Isle of Capri-Cape Girardeau, LLC) DC 11-503
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FINDINGS OF FACT AND CONCLUSIONS OF LAW **CONCERNING PETITION FOR** **APPROVAL OF PERMANENT DOCKING AND** **HISTORIC DESIGN ELEMENTS OF EXCURSION GAMBLING BOAT**

The Petitioner, IOC-Cape Girardeau, LLC (IOC-CG) filed a petition with the Missouri Gaming Commission (Commission) requesting approval of a site plan, approval of permanent docking and approval of the historic design plan.

Pursuant to 11 CSR 45-13-020(1), Commission Chief Counsel Michael W. Bradley presided as Hearing Officer at the administrative hearing on this petition.

This administrative hearing opinion, consisting of proposed Findings of Fact, Conclusions of Law and Final Order is submitted by the Hearing Officer for the consideration of the Missouri Gaming Commission pursuant to 11 CSR 45-13.020(3) & (4).

GENERAL MATTERS

1. The Missouri Gaming Commission (the "Commission") is a state commission created under Chapter 313, RSMo, with jurisdiction over gaming activities, including riverboat gambling activities, in the State of Missouri.
2. The Commission granted Isle of Capri Casinos, Inc. a Class A gaming license to develop and operate Class B gaming licenses in the State of Missouri.
3. Isle of Capri Casinos, Inc. is the parent organization/controlling entity of IOC-Cape Girardeau, LLC ("IOC-CG").
4. IOC-CG has filed an application for a Class B license with the Commission to own and operate a floating facility excursion gambling boat in Cape Girardeau, Missouri. The Commission selected IOC-CG as priority for investigation of suitability for licensure on December 1, 2010, Resolution No. 10-123.
5. On February 19, 2011, a hearing was held at the Commission headquarters in Jefferson City, Missouri on IOC-CG's Petition. At that hearing testimony was heard from three witnesses, Richard Meister, Vice President of Construction & Design, Isle

of Capri Casinos, Inc.; Aaron Rumple, Director of Design, Kuhlman design Group; and Jim Manley, AM/ASA, Manley Brothers LLC.

6. At that hearing exhibits 1 through 7 were offered and admitted into evidence.
7. IOC-CG waived the requirement of Section 313.805 (17), RSMo, that the Gaming Commission render a finding within thirty days of the hearing.

SITE PLAN

8. The law requires the floating facility to be located within 1,000 feet of the main channel of the Mississippi River.

FINDINGS OF FACTS

9. Exhibit 5 is a 2004 letter from the U.S. Army Corps of Engineers to the Commission that explains that the high water elevation, ordinarily referred to as the flood stage, is considered the main channel of the river by the Corps of Engineers (T-53 L-4).
10. In Exhibit 6, a letter from Tamara L. Atchley, P.E. PMP, of the U.S. Department of the Army, St. Louis District Corps of Engineers states that the flood stage, defined as the approximate ordinary high water elevation, for this site is 338.1 NGVD.
11. Exhibit 1 is a diagram of the proposed floating facility complex prepared by Kuhlman design Group. Taking the flood stage, as defined by the Corps of Engineers, the Kuhlman design Group determined the location of 1,000 feet from flood stage. The 1,000 feet is designated by a red line marked "1000 FT LMT" on Exhibit 1 (T-23 L-17).
12. The testimony was that the floating facility will be precast concrete barge cells floating upon water in a basin, shown in Exhibit 2. The location of the floating facility is illustrated in a diagram, Exhibit 1 (T-22 L-7). The evidence presented is that the floating facility excursion gambling boat will be constructed within 1,000 feet of the main channel of the Mississippi River (T-53 L-19).

CONCLUSIONS OF LAW

13. Article III, Section 39(e) of the Missouri Constitution states in part: "Riverboat gambling authorized on Missouri and Mississippi rivers. - The general assembly is authorized to permit upon the Mississippi and Missouri Rivers only, which shall include artificial spaces that contain water and that are within 1000 feet of the closest edge of the main channel of either of these rivers, lotteries, gift enterprises and games of chance to be conducted on excursion gambling boats and floating facilities."
14. Section 313.800.1(18), RSMo, provides: "As used in sections 313.800 to 313.850, unless the context clearly requires otherwise, the following terms mean: 'Mississippi

River' and 'Missouri River', the water, bed and banks of those rivers, including any space filled by the water of those rivers for docking purposes in a manner approved by the commission but shall not include any artificial space created after May 20, 1994, and is located more than one thousand feet from the closest edge of the main channel of the river as established by the United States Army Corps of Engineers.”.

15. The Constitutional provision supersedes the statutory provisions. See *Asbury v. Lombardi*, 846 S.W. 2d 196, 199 (Mo. banc 1993). Therefore, it is required that the floating facility housing the excursion gambling boat is located upon water contained in the artificial space 1,000 feet from the closest edge of the main channel of the river.
16. The definition of “excursion gambling boat” includes a floating facility licensed by the Gaming Commission where gambling games are allowed, Section 313.800.1(8) RSMo.
17. Therefore, the IOC-CG proposal to construct the floating facility in a basin containing water located within 1,000 feet of the main channel of the Mississippi River, as described in the evidence, meets the legal provisions of site location.

CONTINUOUS DOCKING

18. The law presumes that an excursion gambling boat shall cruise unless the Gaming Commission finds that it is in the best interest of Missouri and the safety of the public to allow it to continuously dock.

FINDINGS OF FACTS

19. The proposed floating facility is to be located in Cape Girardeau, Missouri on the west bank of the Mississippi River approximately 59 miles AOR (Above Ohio River).
20. Exhibit 4, a permanent docking report prepared by James Manley, and the testimony of James Manley, set out the hazards to navigation on the Mississippi River, such as:
 - A. From that location there are numerous bends and weirs (T-58 L-2);
 - B. The Mississippi River near Cape Girardeau has experienced heavy ice and ice gorges. This phenomenon will cause ice dams in the river which raise the water level above the ice dam and lower it below the ice dam. When the ice dam breaks, a wall of ice moves downstream damaging or sinking barges that are in the river in its path (T-58 L-10);
 - C. Flooding or low water regularly occurs on the Mississippi River. Flooding requires substantial mooring in order to secure the riverboat. Flooding also causes dangers in navigation due to increased current flow and increased drift. Low water can cause the riverboat to run into the ground. In the 1990's, prolonged low water on the Missouri River caused two riverboat casinos to run aground, causing the American Bureau of Shipping to revoke certification. The

combination of high and low water causes safety problems for the passenger boarding systems. Sloping ramp-ways may lead to passengers slipping and falling. Boarding ramps must either be adjustable or of considerable length in order to comply with the requirements of the Americans with Disabilities Act (T-61 L-5);

- D. A riverboat docked in the main channel of the river is subject to accumulation of silt, debris and drift under the hull which may damage the riverboat. In addition, a riverboat docked in the main channel of the river will require periodic removal of silt and debris under the hull. Such operations involve considerable risk to the safety of the individuals involved with them (T-61 L-23);
 - E. A riverboat cruising contains multiple risks that can subject the passengers and crew to injury from a number of sources (T-65 L-13); and
 - F. A cruising riverboat is inaccessible to fire, police and other emergency responders, thus creating increased risk of serious injury, with long response time, for the crew and passengers (T-70 L-17).
21. Exhibit 4, a Permanent docking report prepared by James Manley, and the testimony of James Manley set out a recital of accidents involving riverboat casinos:
- A. In 1992, a riverboat casino in New Albany, Indiana was struck by a commercial towboat pushing loaded barges; the riverboat casino suffered extensive damage;
 - B. In 1994, a riverboat casino on its way to the home port was struck by a towboat pushing a cement barge, resulting in 1/3 of the riverboat casino being flooded from a 90 foot long 6 feet high gash in the riverboat casino;
 - C. The riverboat casino in Caruthersville has had two incidents where drifting barges struck the protective cell and the passenger boarding ramp;
 - D. In 1998, the Admiral Casino, while at dock, was struck by barges being pushed by a towboat; all but one of the Admiral's mooring wires were severed; passengers had to be evacuated and several passengers suffered injuries;
 - E. In 1993, a towboat was pushing loaded barges on the Mississippi River near Cape Girardeau when the towboat lost control and struck the Cape Grain dock damaging a barge moored at the dock as well as the dock itself;
 - F. In the early 1990's, a towboat pushing barges struck ground upstream from Cape Girardeau; the barges became loose, struck and did extensive damage to the J.D. Street oil dock as well as striking the Cape Bridge;
 - G. In July 2006, low water levels in the Mississippi River at the Casino Queen in East St. Louis, Illinois placed the boarding barges aground and listing resulting in a passenger falling and breaking her ankle; and

- H. In 2008, a riverboat casino in Vicksburg, Mississippi was damaged by flood water.
22. In Exhibit 7 is a letter from Rick Ennis, the Fire Chief of the Cape Girardeau Fire Department. In it Chief Ennis states, "In regard to the cruising requirement for a floating riverboat casino, I want to express strong reservation to any such activity. Not only is that portion of the Mississippi River running by Cape Girardeau challenging to navigate, there is also significant barge traffic on the river. Finally, my department does not have the sufficient resources to undertake an open water rescue of the magnitude that would occur if a floating riverboat casino encountered problems while cruising." (T-31 L-7).
23. Between the location of the proposed floating facility and the river are a railroad track and the levee. The levee system covers most of the downtown area of Cape Girardeau. If a cruising riverboat is required, there is limited space where the riverboat could be docked without cutting the levee (T-25 L-13).
24. The evidence is that there will be an economic impact and job creation by having a land based development:
- A. The planned permanent employment for the IOC-CG excursion gambling boat and related operations is 450 employees (T-24 L-1);
 - B. If the cruising requirement is not waived, the excursion gambling boat will be a smaller operation with less related facilities, thus will require a smaller number of employees (T-26 L-19, T-29 L-20);
 - C. The estimated number of construction jobs to build the excursion gambling boat and the related facilities is 450 construction jobs (T-24 L-4); and
 - D. The evidence is that the area where the proposed riverboat gambling operation is to be located is currently a blighted area near downtown Cape Girardeau (T-24 L-12); the construction of the IOC-CG riverboat gambling operation and the related facilities will revitalize that part of Cape Girardeau and will draw more visitors to downtown Cape Girardeau (T-24 L-11, T-28 L-15).

CONCLUSIONS OF LAW

25. Section 313.805(16), RSMo, provides: "Excursion gambling boats shall cruise, unless the commission finds that the best interest of Missouri and the safety of the public indicate the need for continuous docking of the excursion gambling boat in any city or county authorized pursuant to subsection 10 of section 313.812. The commission shall base its decision to allow continuously docked excursion gambling boats on any of the following criteria: the docking location or the excursion cruise could cause danger to the boat's passengers, violate federal law or the law of another state, or cause disruption of interstate commerce or possible interference with railway or barge transportation. In addition, the commission shall consider economic feasibility or

impact that would benefit land-based development and permanent job creation. The commission shall not discriminate among applicants for continuous-docking excursion gambling that are similarly situated with respect to the criteria set forth in this section.”

26. In that section, a two prong test is set out; the first consideration is to examine the hazards of cruising, including the dangers to patrons, impact on interstate commerce and possible interference with rail or barge traffic and the second is to examine the economic impact of cruising.
27. The evidence demonstrates that the first prong, safety and possible disruptions, is met:
 - A. There exist safety issues concerning hazards on the river and the lack of infrastructure to conduct rescues upon the river;
 - B. Because the Mississippi River at Cape Girardeau is the border between the state of Missouri and the state of Illinois, the evidence concerning the past collisions between riverboat casinos and barges illustrates the possible interference with barge transportation and interstate commerce; and
 - C. The evidence is that at the proposed location of the IOC-CG, the railroad tracks are near to the westerly banks of the Mississippi River; thus, if the cruising requirement is not waived, the riverboat gambling operation will be located in such a way so that the railroad track will be between the riverboat gambling operation and the parking lots for the patrons. This will cause safety issues for the patrons as well as possible interference with the railway operation.
28. The evidence demonstrates that the second prong, economic impact, is met in that jobs will be created, a blighted area revived, and more visitors drawn to downtown Cape Girardeau.
29. Therefore, the requirements of Section 313.805(16), RSMo, have been met and it is in the best interest of Missouri and the safety of the public that the IOC-CG floating facility housing the excursion gambling boat be allowed to continuously dock.

DESIGN OF THE EXCURSION GAMBLING FACILITY

30. The law states the Gaming Commission must require that the excursion gambling boat resemble, as nearly as practicable, Missouri or Cape Girardeau’s riverboat history.

FINDINGS OF FACT

31. The Gaming Commission has approved various designs as resembling riverboat history:
- A. A floating platform designed to resemble a 19th century side paddle riverboat was approved to be located in LaGrange; Mark Twain Casino, LLC; Resolution 00-015;
 - B. Italian-Revival style Victorian architecture, popularized during the mid-1800's river towns, was approved to be located at Argosy, Riverside; Missouri Gaming Co., Resolution 02-002;
 - C. An exterior consisting of brick, limestone, cast iron and glass used in a facade and designed to appear to be multiple individual buildings in order to replicate the exterior of the buildings in the Laclede's Landing area in the riverfront in downtown St. Louis, was approved for the Lumière Place Casino, Casino One Corp., Resolution 05-012; and
 - D. A building designed to look like a Missouri riverboat town with the appearance of a series of connected small buildings made of brick with different window treatment was approved for the River City Casino, PNK (River City), LLC; Resolution 05-502.
32. The riverboat history of Cape Girardeau extends to the French trading post in 1733, established by Jean Baptiste Girardot (T-37 L-15). The permanent settlement was founded by Don Louis Lorimier as Cape Girardeau in 1793. A reconstruction of Lorimer's "Red House" is a landmark in Cape Girardeau (T-38 L-2). Lewis and Clark visited Cape Girardeau before they began their exploration of the west. After the steamboats were introduced in the 1830's, Cape Girardeau was the main port between St. Louis and Memphis.¹ The river and river transportation continue to play an important part of the economy of the Cape Girardeau area. Barges continue to haul freight on the Mississippi River. Much of the freight currently, and in the recent past, hauled by barge in the Cape Girardeau area is agricultural related grown in the farmland of southeast Missouri and southern Illinois (T-38 L-12). The riverboat history also includes the development along the riverfront in Cape Girardeau.
33. As was stated in the testimony and set out in Exhibit 3, the architect's vision for the design of the riverboat gambling facility is to create a "port city" collage of the traditions and history of Cape Girardeau and the city's relationship to the Mississippi River (T-46 L-18).

¹ The role of the river and riverboats during the civil war in the Cape Girardeau area is the subject of the novel, *The Gold of Cape Girardeau*. Morley Swindle. *The Gold of Cape Girardeau*. Cape Girardeau, Missouri, Southeast Missouri State University Press, 2002.

34. The design elements and each element's relationship to Missouri's and Cape Girardeau's riverboat history are as follows²:
- A. The porte-cochere at the entrance to the riverboat gambling facility is cable suspended from a pair of stone and steel masts. This form is designed to reflect two river features; first, it resembles the Emerson Memorial Bridge³, a suspension bridge crossing the Mississippi River in Cape Girardeau, (T-49 L-12); and two, it alludes to a riverboat gantry (T-42 L-24);
 - B. The main building exterior is separated into a collection of "port buildings" such as warehouse, commercial or agricultural structures located near a river port (T-45 L-24);
 - C. A tower element is located near the entrance, designed to resemble a grain silo which are often located near the river in order to load the grain onto barges (T-50 L-22);
 - D. Throughout the structure are wooden slats designed to represent the timber rafts that were used to transport timber down the Mississippi River (T-41 L-17, T-43 L-21), as well as the use of color to pay homage to the Lorimer's "Red House" (T-45 L-3);
 - E. A portion of the outside is designed to reflect the levee wall that currently protects downtown Cape Girardeau (T-47 L-5);
 - F. Other portions of the exterior of the building are designed to reflect nautical shapes with a fireplace chimney designed to resemble riverboat smoke stacks (T-44 L-12);
 - G. In the interior, flowing ceiling shapes are designed to echo the changing Mississippi River and its sandbars that appear and disappear over time (T-43 L-23); and
 - H. The interior columns are covered in wood in order to reflect railroad bridges that crossed bodies of water in the area (T-51 L-9).

CONCLUSIONS OF LAW

35. Section 313.812.3, RSMo, provides: "The commission shall require, as a condition of granting a license, that an applicant operate an excursion gambling boat which, as nearly as practicable, resembles or is a part of Missouri's or the home dock city's or county's riverboat history."

² Illustrations of the various design elements and the references to riverboat history are contained in Exhibit 3.

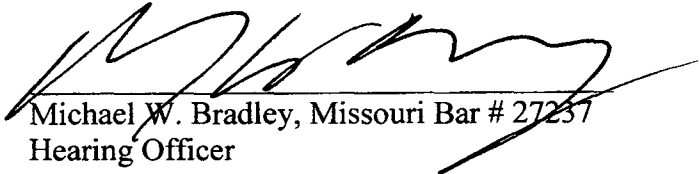
³ The Emerson Memorial Bridge is the setting for the opening sequence of the novel, *Bootheel Man*. Morley Swindle. Bootheel Man. Cape Girardeau, Missouri, Southeast Missouri State University Press, 2007.

36. The elements of the design of the IOC-CG riverboat gambling facility comply with the requirement of Section 313.812.3, RSMo, in that the collage of the different river or riverboat related elements resemble Missouri's and Cape Girardeau's riverboat history.


FINAL ORDER

37. Accordingly, based on the foregoing Findings of Fact and Conclusions of Law and the record as a whole, IT IS HEREBY ORDERED that:
- A. The location of the floating facility to be operated as an excursion gambling boat proposed by IOC-CG is found to be suitable, as it complies with Missouri law. Therefore, IOC-CG is hereby granted approval for the location of the floating facility to house the excursion gambling boat as set out in the evidence and illustrated by the final development plan, Exhibit 1. However, this order is contingent upon the location of the site remaining as proposed in the hearing. This contingency is considered met upon the granting of a Class B gaming license by the Commission;
 - B. IOC-CG shall be authorized to operate the floating facility described in the evidence as a continuously docked excursion gambling boat. However, this order is contingent upon IOC-CG obtaining all other governmental approvals or permits necessary to operate the floating facility as a continuously docked excursion gambling boat and the granting of a Class B gaming license to IOC-CG; and
 - C. IOC-CG is granted approval of the design of the floating facility housing the excursion gambling boat as presented at the hearing. However, this order is contingent upon the design of the facility remaining as described in the hearing. This contingency is considered met upon the granting of a Class B gaming license by the Commission.

Respectfully submitted,


Michael W. Bradley, Missouri Bar # 27237
Hearing Officer

Approved this 30th day of March, 2011 by the Missouri Gaming Commission by adoption of Resolution No. 11-019.


James L. Mathewson
Chairman
Missouri Gaming Commission